



January 24, 2006

HOUSE BILL No. 1306

DIGEST OF HB 1306 (Updated January 23, 2006 3:21 pm - DI 107)

Citations Affected: IC 23-1; IC 23-4; IC 23-16; IC 23-17; IC 23-18.

Synopsis: Various corporate law matters. Changes the name of the corporate law survey commission to the business law survey commission. Permits the execution of certain documents by an attorney in fact. Provides that distributions by a corporation or limited liability company do not include reasonable compensation, retirement payments, or guaranty payments. Provides for conversion of certain domestic or foreign entities to certain other entities. Specifies the rights of access of members to records or information of a limited liability company. Specifies the procedure for revocation of dissolution by a limited liability company.

Effective: July 1, 2006.

Bright

January 10, 2006, read first time and referred to Committee on Judiciary.
January 23, 2006, reported — Do Pass.

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HB 1306—LS 6756/DI 103+



January 24, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

HOUSE BILL No. 1306

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 23-1-17-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. Official comments
3 may be published by the general corporation law study commission
4 (P.L.237-1986) and the ~~corporate~~ **business** law survey commission
5 (IC 23-1-54-3). After their publication, the comments may be consulted
6 by the courts to determine the underlying reasons, purposes, and
7 policies of this article and may be used as a guide in its construction
8 and application.
- 9 SECTION 2. IC 23-1-18-1, AS AMENDED BY P.L.178-2005,
10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2006]: Sec. 1. (a) A document must satisfy the requirements
12 of this section, and of any other section that adds to or varies these
13 requirements, to be entitled to filing by the secretary of state.
- 14 (b) This article must require or permit filing the document in the
15 office of the secretary of state.
- 16 (c) The document must contain the information required by this
17 article. It may contain other information as well.

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(d) The document must be typewritten or printed, legible, and otherwise suitable for processing.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) by the chairman of the board of directors of the domestic or foreign corporation or by any of its officers;

(2) if directors have not been selected or the corporation has not been formed, by an incorporator;

(3) if the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary; or

(4) for purpose of annual or biennial reports, by:

(A) a registered agent;

(B) a certified public accountant; or

(C) an attorney;

employed by the business entity.

(g) Except as provided in subsection ~~(k)~~; **(m)**, the person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the person signs. A signature on a document authorized to be filed under this article may be:

(1) a facsimile; ~~The or~~

(2) made by an attorney in fact.

(h) A power of attorney relating to the signing of a document authorized to be filed under this article by an attorney in fact may but is not required to be:

(1) sworn to, verified, or acknowledged;

(2) signed in the presence of a notary public;

(3) filed with the secretary of state; or

(4) included in another written agreement.

However, the power of attorney must be retained in the records of the corporation.

(i) A document authorized to be filed under this article may but is not required to contain:

(1) the corporate seal;

(2) an attestation by the secretary or an assistant secretary; and

(3) an acknowledgment, verification, or proof.

~~(h)~~ **(j) If the secretary of state has prescribed a mandatory form for the document under section 2 of this chapter, the document must be in**

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or on the prescribed form.

(k) The document must be delivered to the office of the secretary of state for filing as described in section 1.1 of this chapter and the correct filing fee must be paid in the manner and form required by the secretary of state.

(l) The secretary of state may accept payment of the correct filing fee by credit card, debit card, charge card, or similar method. However, if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

(m) A signature on a document that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(1) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(2) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

SECTION 3. IC 23-1-20-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. (a) "Distribution" means a direct or indirect transfer of money or other property (except a corporation's own shares) or incurrence or transfer of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares under IC 23-1-28. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(b) The term does not include:

(1) amounts constituting reasonable compensation for past or present services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other

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benefit program; or

(2) the making of or payment or performance upon a bona fide guaranty or similar arrangement by a corporation to or for the benefit of its shareholders.

However, the failure of an amount to satisfy subdivision (1), or of a payment or performance to satisfy subdivision (2), is not determinative of whether the amount, payment, or performance is a distribution.

SECTION 4. IC 23-1-38.5-1, AS AMENDED BY P.L.178-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. The following definitions apply throughout this chapter:

(1) "Charter" means:

(A) the original articles of incorporation and all amendments required to be filed by a domestic corporation; or

(B) any original public organic documents and all amendments required to be filed by a domestic other entity;

with the secretary of state in connection with the formation of the corporation or other entity.

(2) "Converting entity" means

(A) a domestic business corporation or a domestic other entity that adopts a plan of entity conversion. or

(B) a foreign other entity converting to a domestic business corporation.

(3) "Domestic entity" means a corporation or other entity that is incorporated or organized under the laws of Indiana.

(4) "Filing entity" means an entity that is created by filing a public organic document.

(5) "Foreign entity" means a corporation or other entity that is incorporated or organized under a law other than the laws of Indiana.

(6) "Limited liability entity" means a corporation or other entity that provides for limited personal liability of its interest holders.

(7) "Other entity" means a limited liability company, limited liability partnership, limited partnership, general partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and that is not described in subdivision (1) or (3): a corporation.

(8) "Surviving entity" means the corporation or other entity

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that is in existence immediately after consummation of an entity conversion under this chapter.

(9) "Unlimited liability entity" means an entity that does not limit the personal liability of its interest holders.

SECTION 5. IC 23-1-38.5-2, AS AMENDED BY P.L.178-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. **(a) A corporation, a nonprofit corporation, or any other entity engaging in a business that is subject to regulation under another statute may be a party to a transaction under this chapter unless the transaction is prohibited or authorized under another statute.**

(b) This chapter may not be used to effect a transaction that:

- (1) converts an insurance company organized on the mutual principle to a company organized on a stock share basis;
- (2) converts a nonprofit corporation to a ~~domestic~~ corporation or other entity; or
- (3) converts a domestic corporation or other entity to a nonprofit corporation.

SECTION 6. IC 23-1-38.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) A foreign ~~business~~ corporation may become a domestic ~~business~~ corporation only if the domestication is permitted by the organic law of the foreign corporation. The laws of Indiana govern the effect of domesticating in Indiana under this chapter.

(b) A domestic ~~business~~ corporation may become a foreign ~~business~~ corporation only if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication must be approved by the adoption by the corporation of a plan of domestication in the manner provided in this section. The laws of the foreign jurisdiction govern the effect of domesticating in that jurisdiction.

(c) The plan of domestication must include:

- (1) a statement of the jurisdiction in which the corporation is to be domesticated;
- (2) the terms and conditions of the domestication;
- (3) the manner and basis of reclassifying the shares of the corporation following its domestication into:
 - (A) shares or other securities;
 - (B) obligations;
 - (C) rights to acquire shares or other securities;
 - (D) cash;

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(E) other property; or

(F) any combination of the types of assets referred to in clauses (A) through (E); and

(4) any desired amendments to the articles of incorporation of the corporation following its domestication.

(d) If:

(1) a debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured; or

(2) a contract of any kind;

that is issued, incurred, or executed by a domestic corporation before July 1, 2002; contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation; the provision applies to a domestication of the corporation until the provision is amended after that date.

SECTION 7. IC 23-1-38.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. In the case of a domestication of a domestic ~~business~~ corporation in a foreign jurisdiction, the following apply:

(1) The plan of domestication must be adopted by the board of directors.

(2) After adopting the plan of domestication, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make that recommendation, in which case the board of directors must communicate to the shareholders the basis for that determination.

(3) The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not the shareholder is entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan. The notice must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the domestication.

(5) Unless a greater requirement is established by the articles of

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incorporation or by the board of directors acting under subdivision (3), the plan of domestication may be submitted for the approval of the shareholders:

(A) at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists; and

(B) if any class or series of shares is entitled to vote as a separate group on the plan, at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the domestication by that voting group is present.

(6) Separate voting on the plan of domestication by voting groups is required by each class or series of shares that:

(A) is to be reclassified under the plan of domestication into other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the types of assets referred to in this clause;

(B) would be entitled to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under IC 23-1-30-7; or

(C) is entitled under the articles of incorporation to vote as a voting group to approve an amendment of the articles.

~~(7) If any provision of the articles of incorporation, the bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before July 1, 2002, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation until the provision is amended after that date.~~

SECTION 8. IC 23-1-38.5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) After the domestication of a foreign ~~business~~ corporation has been authorized as required by the laws of the foreign jurisdiction, the articles of domestication must be executed by an officer or other duly authorized representative. The articles must set forth:

(1) the name of the corporation immediately before the filing of the articles of domestication and, if that name is unavailable for use in Indiana or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of IC 23-1-23-1;

(2) the jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication in

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that jurisdiction; and

(3) a statement that the domestication of the corporation in Indiana was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication under this chapter.

(b) The articles of domestication must either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in the articles of incorporation or must have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication must be delivered to the secretary of state for filing and are effective at the time provided in IC 23-1-18-4.

(d) If the foreign corporation is authorized to transact business in this state under IC 23-1-49, its certificate of authority is canceled automatically on the effective date of its domestication.

SECTION 9. IC 23-1-38.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. (a) Whenever a domestic ~~business~~ corporation has adopted and approved, in the manner required by this chapter, a plan of domestication providing for the corporation to be domesticated in a foreign jurisdiction, an officer or another authorized representative of the corporation must execute articles of charter surrender on behalf of the corporation. The articles of charter surrender must set forth:

(1) the name of the corporation;

(2) a statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction;

(3) a statement that the domestication was approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group, in the manner required by this chapter and the articles of incorporation; and

(4) the corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender must be delivered by the corporation to the secretary of state for filing. The articles of charter surrender are effective at the time provided in IC 23-1-18-4.

SECTION 10. IC 23-1-38.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) When a domestication of a foreign ~~business~~ corporation in Indiana becomes effective:

(1) the title to all real and personal property, both tangible and

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intangible, held by the corporation remains in the corporation without reversion or impairment;

(2) the liabilities of the corporation remain the liabilities of the corporation;

(3) an action or proceeding pending against the corporation continues against the corporation as if the domestication had not occurred;

(4) the articles of domestication, or the articles of incorporation attached to the articles of domestication, constitute the articles of incorporation of the corporation;

(5) the shares of the corporation are reclassified into shares, other securities, obligations, rights to acquire shares or other securities, or cash or other property in accordance with the terms of the domestication as approved under the laws of the foreign jurisdiction, and the shareholders are entitled only to the rights provided by those terms and under those laws; and

(6) the corporation is considered to:

(A) be incorporated under the laws of Indiana for all purposes;

(B) be the same corporation without interruption as the corporation that existed under the laws of the foreign jurisdiction; and

(C) have been incorporated on the date it was originally incorporated in the foreign jurisdiction.

(b) When a domestication of a domestic ~~business~~ corporation in a foreign jurisdiction becomes effective, the foreign ~~business~~ corporation is considered to:

(1) appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication; and

(2) agree that it will promptly pay the amount, if any, to which shareholders are entitled under IC 23-1-40.

(c) The owner liability of a shareholder in a foreign corporation that is domesticated in Indiana is as follows:

(1) The domestication does not discharge owner liability under the laws of the foreign jurisdiction to the extent owner liability arose before the effective time of the articles of domestication.

(2) The shareholder does not have owner liability under the laws of the foreign jurisdiction for a debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication.

(3) The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any owner liability

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1 preserved by subdivision (1), as if the domestication had not
 2 occurred and the corporation were still incorporated under the
 3 laws of the foreign jurisdiction.

4 (4) The shareholder has whatever rights of contribution from
 5 other shareholders are provided by the laws of the foreign
 6 jurisdiction with respect to any owner liability preserved by
 7 subdivision (1), as if the domestication had not occurred and the
 8 corporation were still incorporated under the laws of that
 9 jurisdiction.

10 SECTION 11. IC 23-1-38.5-9 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. (a) Unless otherwise
 12 provided in a plan of domestication of a domestic ~~business~~ corporation,
 13 after the plan has been adopted and approved as required by this
 14 chapter, and at any time before the domestication has become effective,
 15 the plan of domestication may be abandoned by the board of directors
 16 without action by the shareholders.

17 (b) If a domestication is abandoned under subsection (a) after
 18 articles of charter surrender have been filed with the secretary of state
 19 but before the domestication has become effective, a statement that the
 20 domestication has been abandoned under this section, executed by an
 21 officer or other authorized representative, must be delivered to the
 22 secretary of state for filing before the effective date of the
 23 domestication. The statement is effective upon filing and the
 24 domestication is abandoned and may not become effective.

25 (c) If the domestication of a foreign ~~business~~ corporation in Indiana
 26 is abandoned under the laws of the foreign jurisdiction after articles of
 27 domestication have been filed with the secretary of state, a statement
 28 that the domestication has been abandoned, executed by an officer or
 29 other authorized representative, must be delivered to the secretary of
 30 state for filing. The statement is effective upon filing and the
 31 domestication is abandoned and may not become effective.

32 SECTION 12. IC 23-1-38.5-10 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. (a) A domestic
 34 ~~business~~ corporation may become a domestic other entity under a plan
 35 of entity conversion. If the organic law of the ~~other surviving~~ entity
 36 does not provide for a conversion, section 14 of this chapter governs
 37 the effect of converting to that form of entity.

38 (b) A domestic ~~business~~ corporation may become a foreign other
 39 entity **under a plan of entity conversion** only if the entity conversion
 40 is permitted by the laws of the foreign jurisdiction. The laws of the
 41 foreign jurisdiction govern the effect of converting to an other entity in
 42 that jurisdiction.

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(c) A domestic other entity may become a domestic ~~business~~ corporation ~~Section 14~~ **under a plan of entity conversion. Section 15** of this chapter governs the effect of converting to a domestic ~~business~~ corporation.

(d) **A domestic other entity may become a different domestic other entity under a plan of entity conversion. If the organic law of the surviving entity does not provide for a conversion, section 15 of this chapter governs the effect of converting to the different domestic other entity.**

(e) A domestic other entity may become a foreign other entity under a plan of entity conversion only if the entity conversion is permitted by the laws of the foreign jurisdiction. The laws of the foreign jurisdiction govern the effect of converting to an other entity in that jurisdiction.

(f) A domestic other entity may become a foreign corporation under a plan of entity conversion only if the entity conversion is permitted by the laws of the foreign jurisdiction. The laws of the foreign jurisdiction govern the effect of converting to a corporation in that jurisdiction.

(g) A foreign other entity may become a domestic corporation or other entity if the organic law of the foreign other entity authorizes the entity to become an entity in another jurisdiction. The laws of Indiana govern the effect of converting to a domestic corporation or other entity under this chapter.

(h) A foreign corporation may become a domestic other entity if the organic law of the foreign corporation authorizes the corporation to become an entity in another jurisdiction. The laws of Indiana govern the effect of converting to a domestic other entity under this chapter.

(i) If the organic law of a domestic other entity does not provide procedures for the approval of an entity conversion, the conversion must be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the other entity, and its interest holders are entitled to appraisal rights if appraisal rights are available upon any type of merger under the organic law of the other entity. If the organic law of a domestic other entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion must be adopted and approved **and** the entity conversion effectuated ~~and appraisal rights exercised~~, in accordance with the procedures set forth in this chapter and in IC 23-1-40. ~~Without limiting the provisions of this subsection, a domestic other entity whose organic law does not provide procedures for the approval of an entity~~

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conversion is subject to subsection (e) and section 12(7) of this chapter.

For purposes of applying this chapter and IC 23-1-40:

(1) the other entity and its interest holders, interests, and organic documents taken together are considered a domestic business corporation and the shareholders, shares, and articles of incorporation of a domestic business corporation, as the context may require; and

(2) if the business and affairs of the other entity are managed by a group of persons that is not identical to the interest holders, that group is considered the board of directors.

(d) A foreign other entity may become a domestic business corporation if the organic law of the foreign other entity authorizes it to become a corporation in another jurisdiction. The laws of this state govern the effect of converting to a domestic business corporation under this chapter.

(e) If a debt security, note, or similar evidence of indebtedness for money borrowed; whether secured or unsecured; or a contract of any kind; issued, incurred, or executed by a domestic business corporation before July 1, 2002; applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation; the provision applies to an entity conversion of the corporation until the provision is amended after that date.

(j) If as a result of conversion one (1) or more shareholders or interest holders of a surviving entity become subject to owner liability for the debts, obligations, or liabilities of the surviving entity or any other person or entity, approval of the plan of conversion requires each shareholder or interest holder of the converting entity to execute a separate written consent to become subject to owner liability.

SECTION 13. IC 23-1-38.5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. A plan of entity conversion must include:

(1) a statement of the type of other entity that the surviving entity will be and, if it will be a foreign other entity, its jurisdiction of organization;

(2) the terms and conditions of the conversion;

(3) the manner and basis of converting the shares **or interests** of the domestic business corporation **converting entity** following its conversion into **shares**, interests, or other securities, obligations, rights to acquire interests or other securities **of the surviving entity or** cash, other property, or any combination of the types of assets referred to in this subdivision; and

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(4) the full text, as in effect immediately after consummation of the conversion, of the organic documents of the surviving entity.

SECTION 14. IC 23-1-38.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 12. In the case of an entity conversion of a domestic ~~business~~ corporation to a domestic other entity or foreign other entity, the following apply:

(1) The plan of entity conversion must be adopted by the board of directors.

(2) After adopting the plan of entity conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make that recommendation, in which case the board of directors must communicate to the shareholders the basis for that determination.

(3) The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan. The notice must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion.

(5) Unless a greater requirement is established by the articles of incorporation or by the board of directors acting under subdivision (3), approval of the plan of entity conversion requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists.

(6) In addition to the vote required under subdivision (5), separate voting on the plan of equity conversion by voting groups is also required by each class or series of shares. Unless the articles of incorporation, or the board of directors acting under subdivision (3), requires a greater vote or a greater number of votes to be present, if the corporation has more than one (1) class or series of shares outstanding, approval of the plan of entity conversion requires the approval of each separate voting group at a meeting

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at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the conversion by that voting group is present.

~~(7) If any provision of the articles of incorporation, the bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before July 1, 2002, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision applies to an entity conversion of the corporation until the provision is subsequently amended.~~

~~(8)~~ (7) If as a result of the conversion one (1) or more shareholders of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion requires the execution, by each shareholder, of a separate written consent to become subject to the owner liability.

SECTION 15. IC 23-1-38.5-13, AS AMENDED BY P.L.178-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13. (a) After conversion of a domestic ~~business~~ corporation to a domestic other entity has been adopted and approved as required by this chapter, articles of entity conversion must be executed on behalf of the corporation by any officer or other duly authorized representative. The articles must:

(1) set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which must satisfy the organic law of the surviving entity;

(2) state the type of other entity that the surviving entity will be;

(3) set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by this chapter and the articles of incorporation; and

(4) if the surviving entity is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted, or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic other entity to a domestic ~~business~~ corporation has been adopted and approved as required by the organic law of the other entity, an officer or another duly authorized representative of the other entity must execute articles of entity conversion on behalf of the other entity. The articles must:

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(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the ~~other~~ **converting** entity; and

(3) either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case provisions that would not be required to be included in restated articles of incorporation of a domestic ~~business~~ corporation may be omitted.

(c) After the conversion of a domestic other entity to a different domestic other entity has been adopted and approved as required by the organic law of the different other entity **and, if applicable, section 10(j) of this chapter**, an officer or another authorized representative of the other entity must execute the articles of entity conversion on behalf of the other entity. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the ~~other~~ **converting** entity is to be changed, which must satisfy the requirements of ~~IC 23-1-23-1~~; **the organic laws of the surviving entity**;

(2) set forth a statement that the plan of entity conversion was approved in accordance with the organic law of the ~~other~~ **converting** entity; and

(3) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(d) After the conversion of a foreign other entity to a domestic ~~business~~ corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion must be executed on behalf of the foreign other entity by any officer or authorized representative. The articles must:

(1) set forth the name of the ~~other~~ **converting** entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must

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1 satisfy the requirements of IC 23-1-23-1;

2 (2) set forth the jurisdiction under the laws of which the **other**
3 **converting** entity was organized immediately before the filing of
4 the articles of entity conversion and the date on which the other
5 entity was organized in that jurisdiction;

6 (3) set forth a statement that the conversion of the **other**
7 **converting** entity was duly approved in the manner required by
8 its organic law; and

9 (4) either contain all of the provisions that IC 23-1-21-2(a)
10 requires to be set forth in articles of incorporation and any other
11 desired provisions that IC 23-1-21-2(b) permits to be included in
12 articles of incorporation, or have attached articles of
13 incorporation, except that, in either case, provisions that would
14 not be required to be included in restated articles of incorporation
15 of a domestic business corporation may be omitted.

16 (e) After the conversion of a foreign other entity ~~to a different or~~
17 foreign **corporation to a domestic** other entity has been authorized as
18 required by the laws of the foreign jurisdiction, ~~the~~ articles of entity
19 conversion must be executed on behalf of the foreign **other converting**
20 entity by any officer or authorized representative. The articles must:

21 (1) set forth the name of the **other converting** entity immediately
22 before the filing of the articles of entity conversion and the name
23 to which the name of the **other converting** entity is to be changed,
24 which must satisfy the requirements of ~~IC 23-1-23-1~~; **the organic**
25 **laws of the surviving entity**;

26 (2) set forth the jurisdiction under the laws of which the **other**
27 **converting** entity was organized immediately before the filing of
28 the articles of entity conversion and the date on which the **other**
29 **converting** entity was organized in that jurisdiction;

30 (3) set forth a statement that the conversion of the **other**
31 **converting** entity was approved in the manner required by its
32 organic law; and

33 (4) if the surviving entity is a filing entity, either contain all the
34 provisions required to be set forth in its public organic document
35 and any other desired provisions that are permitted or have
36 attached a public organic document, except that, in either case,
37 provisions that would not be required to be included in a restated
38 public organic document may be omitted.

39 (f) The articles of entity conversion must be delivered to the
40 secretary of state for filing and take effect at the effective time provided
41 in IC 23-1-18-4.

42 (g) If the converting entity is a foreign **corporation or a foreign**

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other entity that is authorized to transact business in Indiana under a provision of law similar to IC 23-1-49, its certificate of authority or other type of foreign qualification is canceled automatically on the effective date of its conversion.

(h) After the conversion of a foreign corporation to a different foreign other entity has been authorized as required by the law of the foreign jurisdiction, the articles of entity conversion must be executed on behalf of the foreign other entity by any officer or authorized representative. The articles must:

(1) set forth the name of the foreign corporation immediately before the filing of the articles of entity conversion and the name to which the name of the foreign corporation is to be changed; which must satisfy the requirements of IC 23-1-23-1;

(2) set forth the jurisdiction under the law under which the foreign corporation was organized immediately before the filing of the articles of entity conversion and the date on which the other entity was organized in that jurisdiction;

(3) set forth a statement that the conversion of the foreign corporation was approved in the manner required by its organic law; and

(4) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

SECTION 16. IC 23-1-38.5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14. (a) Whenever a domestic business corporation filing entity has adopted and approved, in the manner required by this chapter, a plan of entity conversion providing for the corporation converting entity to be converted to a foreign other entity, articles of charter surrender must be executed on behalf of the other corporation converting entity by any officer or other duly authorized representative. The articles of charter surrender must set forth:

(1) the name of the corporation; converting entity;

(2) a statement that the articles of charter surrender are being filed in connection with the conversion of the corporation domestic entity to a foreign other entity;

(3) a statement that the conversion was duly approved by the shareholders or interest holders in the manner required by this chapter and the articles of incorporation if the converting entity

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1 is a domestic corporation or the organic laws of the
 2 converting entity and, if applicable, section 10(j) of this
 3 chapter if the converting entity is a domestic other entity;

4 (4) the jurisdiction under the laws of which the surviving entity
 5 will be organized; and

6 (5) if the surviving entity will **not** be a ~~nonfiling~~ **filing** entity, the
 7 address of its executive office immediately after the conversion.

8 (b) The articles of charter surrender must be delivered by the
 9 ~~corporation~~ **converting entity** to the secretary of state for filing. The
 10 articles of charter surrender take effect on the effective time provided
 11 in IC 23-1-18-4.

12 SECTION 17. IC 23-1-38.5-15 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 15. (a) When a
 14 conversion under this section in which the surviving entity is a
 15 domestic business corporation or domestic other entity becomes
 16 effective:

17 (1) the title to all real and personal property, both tangible and
 18 intangible, of the converting entity remains in the surviving entity
 19 without reversion or impairment;

20 (2) the liabilities of the converting entity remain the liabilities of
 21 the surviving entity;

22 (3) an action or proceeding pending against the converting entity
 23 continues against the surviving entity as if the conversion had not
 24 occurred;

25 (4) in the case of a surviving entity that is a filing entity, the
 26 articles of conversion ~~or~~ **and** the articles of incorporation or
 27 public organic document attached to the articles of conversion
 28 constitute the articles of incorporation or public organic document
 29 of the surviving entity;

30 (5) in the case of a surviving entity that is **not** a ~~nonfiling~~ **filing**
 31 entity, the private organic document provided for in the plan of
 32 conversion constitutes the private organic document of the
 33 surviving entity;

34 (6) the ~~share or interests~~ **shares, interests, other securities,**
 35 **obligations, or rights to acquire shares, interests, or other**
 36 **securities** of the converting entity are reclassified into shares,
 37 interests, other securities, obligations, rights to acquire shares,
 38 interests, or ~~their other~~ **securities of the surviving entity**, or into
 39 cash or other property in accordance with the plan of conversion,
 40 and the shareholders or interest holders of the converting entity
 41 are entitled only to the rights provided in the plan of conversion
 42 and to any rights they may have under ~~IC 23-1-40~~; **the organic**

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1 **law of the converting entity; and**

2 (7) the surviving entity is considered **for all purposes of the laws**
3 **of Indiana** to:

4 (A) be a domestic ~~business~~ corporation or **domestic** other
5 entity; ~~for all purposes;~~

6 (B) be the same corporation or other entity without
7 interruption as the converting entity that existed before the
8 conversion; and

9 (C) have been incorporated or otherwise organized on the date
10 that the converting entity was originally incorporated or
11 organized; **and**

12 **(8) unless otherwise agreed in writing, for all purposes of the**
13 **laws of Indiana, the converting entity is not required to wind**
14 **up its affairs or pay its liabilities and distribute its assets, and**
15 **the conversion does not constitute a dissolution of the**
16 **converting entity.**

17 (b) ~~When a conversion of a domestic business corporation to a~~
18 ~~foreign other entity becomes effective; If the shareholders or interest~~
19 ~~holders of a converting entity are entitled to receive dissenters'~~
20 ~~rights upon conversion,~~ the surviving entity is considered to:

21 (1) appoint the secretary of state as its agent for service of process
22 in a proceeding to enforce the rights of shareholders **or interest**
23 **holders** who exercise ~~appraisal~~ **dissenters'** rights in connection
24 with the conversion; and

25 (2) agree that it will promptly pay the amount, if any, to which the
26 shareholders **or interest holders** referred to in subdivision (1) are
27 entitled under ~~IC 23-1-40;~~ **the organic law of the converting**
28 **entity.**

29 (c) A shareholder **or interest holder in a limited liability entity**
30 **that is a converting entity** who becomes subject to owner liability for
31 some or all of the debts, obligations, or liabilities of the surviving entity
32 is personally liable only for those debts, obligations, or liabilities of the
33 surviving entity that arise after the effective time of the articles of
34 entity conversion.

35 (d) The owner liability of an interest holder in an ~~other~~ **unlimited**
36 **liability entity that is a converting entity that** converts to a ~~domestic~~
37 ~~business corporation~~ **limited liability entity** is as follows:

38 (1) The conversion does not discharge any owner liability under
39 the organic law of the ~~other~~ **converting** entity to the extent that
40 any such owner liability arose before the effective time of the
41 articles of entity conversion.

42 (2) The interest holder does not have owner liability under the

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organic law of the ~~other~~ **surviving** entity for any debt, obligation, or liability of the ~~corporation~~ **surviving entity** that arises after the effective time of the articles of entity conversion.

(3) The provisions of the organic law of the ~~other~~ **converting** entity continue to apply to the collection or discharge of any owner liability preserved by subdivision (1), as if the conversion had not occurred and the surviving entity were still the converting entity.

(4) The interest holder has whatever rights of contribution from other interest holders are provided by the organic law of the ~~other~~ **converting** entity with respect to any owner liability preserved by subdivision (1), as if the conversion had not occurred and the surviving entity were still the converting entity.

SECTION 18. IC 23-1-38.5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16. (a) Unless otherwise provided in a plan of entity conversion of a domestic ~~business corporation;~~ **entity**, after the plan has been adopted and approved as required by this chapter, and at any time before the entity conversion becomes effective, the plan of entity conversion may be abandoned by the ~~board of directors governing or managing body or person of the converting entity~~ without action by the shareholders or interest holders of the converting entity.

(b) If an entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the secretary of state but before the entity conversion becomes effective, a statement that the entity conversion has been abandoned under this section, executed by an officer or authorized representative, must be delivered to the secretary of state for filing before the effective date of the entity conversion. Upon filing, the statement takes effect and the entity conversion is considered abandoned and shall not become effective.

SECTION 19. IC 23-1-49-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) A foreign corporation authorized to transact business in Indiana must obtain an amended certificate of authority from the secretary of state if it: ~~changes:~~

- (1) **changes** its corporate name;
- (2) **changes** the period of its duration; ~~or~~
- (3) **changes** the state or country of its incorporation; **or**
- (4) **converts to a different form of entity.**

(b) The requirements of section 3 of this chapter for obtaining an original certificate of authority apply to obtaining an amended

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1 certificate under this section.

2 SECTION 20. IC 23-1-54-3 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) The Indiana
4 ~~corporate business~~ law survey commission is established for the
5 purpose of considering recommendations to the general assembly, from
6 time to time, concerning amendments to ~~the Indiana business~~
7 ~~corporation law~~ this article, IC 23-17, or any other corporation, limited
8 liability company, or partnership laws, or new or additional legislation
9 affecting corporations, limited liability companies, partnerships, or
10 other business entities (domestic or foreign) authorized to do business
11 or doing business in Indiana.

12 (b) The commission consists of fourteen (14) members, appointed
13 by the governor, who shall serve without compensation and without
14 reimbursement for expenses. The secretary of state also shall serve as
15 an ex officio member.

16 (c) The commission shall conduct its proceedings and affairs
17 according to such rules as it may prescribe.

18 (d) The commission may publish official comments.

19 SECTION 21. IC 23-4-1-54 IS ADDED TO THE INDIANA CODE
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
21 1, 2006]: Sec. 54. (a) As used in this section, "other entity" has the
22 meaning set forth in IC 23-1-38.5-1.

23 (b) A domestic corporation, domestic other entity, foreign
24 corporation, or foreign other entity may convert to a domestic
25 partnership under IC 23-1-38.5.

26 (c) A domestic partnership may convert to a domestic
27 corporation, domestic other entity, foreign corporation, or foreign
28 other entity under IC 23-1-38.5.

29 SECTION 22. IC 23-16-3-5 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) Each certificate
31 required or permitted to be filed in the office of the secretary of state
32 under this article shall be executed in the following manner:

33 (1) An initial certificate of limited partnership must be signed by
34 all general partners.

35 (2) A certificate of amendment or restatement must be signed by
36 at least one (1) general partner and by each other general partner
37 designated in the certificate as a new general partner; however, if
38 there are no general partners a certificate of amendment or
39 restatement must be signed by each new general partner as
40 designated in the certificate.

41 (3) A certificate of cancellation must be signed by all general
42 partners; however, if there is no general partner, a certificate of

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cancellation must be signed by a majority in interest of the limited partners.

(b) Any person may sign a certificate, a partnership agreement, or an amendment to a certificate or partnership agreement by an attorney in fact. Powers of attorney relating to the signing of a certificate, a partnership agreement, or an amendment to a certificate or partnership agreement by an attorney in fact need not be sworn to, verified, or acknowledged, **or signed in the presence of a notary public**, and need not be filed with the secretary of state, but must be retained among the records of the partnership. A power of attorney may be included in the partnership agreement and need not be a separate document.

(c) The execution of a certificate by any person constitutes an oath or affirmation under the penalties of perjury that to the best of the person's knowledge and belief the statements made in the certificate are true.

SECTION 23. IC 23-16-3-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 14. (a) As used in this section, "other entity" has the meaning set forth in IC 23-1-38.5-1.**

(b) A domestic corporation, domestic other entity, foreign corporation, or foreign other entity may convert to a domestic limited partnership under IC 23-1-38.5.

(c) A domestic limited partnership may convert to a domestic corporation, domestic other entity, foreign corporation, or foreign other entity under IC 23-1-38.5.

SECTION 24. IC 23-17-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. Official comments may be published by the Indiana ~~corporate~~ **business** law survey commission and, after publication, the comments may be consulted by the courts to determine the underlying reasons, purposes, and policies of this article and may be used as a guide in this article's construction and application.

SECTION 25. IC 23-17-18-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) A board of directors may amend or repeal a corporation's bylaws unless:

- (1) articles of incorporation;
- (2) bylaws; or
- (3) this article;

provide otherwise, subject to approval required under IC 23-17-17-1. However, until the directors have been chosen, the incorporators have power to amend or repeal the bylaws. This section is subject to the class voting rules under section 2 of this chapter.

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(b) The corporation must provide notice of any meeting of directors at which an amendment is to be approved. The notice must do the following:

- (1) Be in accordance with ~~IC 23-17-19-3~~ **IC 23-17-15-3**.
- (2) State that the purpose of the meeting is to consider a proposed amendment to the bylaws.
- (3) Contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment.

SECTION 26. IC 23-18-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. "Distribution" means a direct or an indirect transfer of money or other property or the incurrence or the transfer of indebtedness by a limited liability company to or for the benefit of its members in respect of their interests in the limited liability company. A distribution may be in the form of a declaration or payment of a dividend, purchase, redemption, or other acquisition of an interest, a distribution of indebtedness, or otherwise.

The term does not include:

- (1) amounts constituting reasonable compensation for past or present services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefit program; or
- (2) the making of or payment or performance upon a bona fide guaranty or similar arrangement by a corporation to or for the benefit of its shareholders.

However, the failure of an amount to satisfy subdivision (1), or of a payment or performance to satisfy subdivision (2), is not determinative of whether the amount, payment, or performance is a distribution.

SECTION 27. IC 23-18-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) The initial operating agreement must be agreed to by all persons who are members at the time the initial agreement is accepted.

(b) An amendment to an oral operating agreement must be approved by the unanimous consent of all members.

(c) An amendment to a written operating agreement must be in writing and must, unless otherwise provided in the operating agreement before the amendment, be approved by the unanimous consent of all members.

(d) A copy of any written amendment to an operating agreement must be delivered to each member who did not consent to the amendment and to each assignee who has not been admitted as a member.

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(e) A person may sign articles of organization, an operating agreement, or an amendment to articles of organization or an operating agreement as an attorney in fact. A power of attorney relating to the signing of a document under this subsection by an attorney in fact may but is not required to be:

- (1) sworn to, verified, or acknowledged;
- (2) signed in the presence of a notary public;
- (3) filed with the secretary of state; or
- (4) included in another written agreement.

However, the power of attorney must be retained in the records of the limited liability company.

SECTION 28. IC 23-18-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) A limited liability company must keep at its principal office the following records and information:

- (1) A list with the full name and last known mailing address of each member and manager, if any, of the limited liability company from the date of organization.
 - (2) A copy of the articles of organization and all amendments.
 - (3) Copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the three (3) most recent years, or if the returns and statements were not prepared, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the same period.
 - (4) Copies of any written operating agreements and all amendments and copies of any written operating agreements no longer in effect.
 - (5) Unless otherwise set forth in a written operating agreement, a writing setting out the following:
 - (A) The amount of cash, if any, and a statement of the agreed value of other property or services contributed by each member and the times at which or events upon the happening of which any additional contributions agreed to be made by each member are to be made.
 - (B) The events, if any, upon the happening of which the limited liability company is to be dissolved and its affairs wound up.
 - (C) Other writings, if any, required by the operating agreement.
- (b) A member may, at the member's own expense, inspect and copy

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the limited liability company records **described in subsection (a)** where the records are located ~~upon reasonable request~~; during ordinary business hours **if the member gives the limited liability company written notice of the member's request at least five (5) business days before the date on which the member wishes to inspect and copy the records.**

(c) Unless greater rights of access to records or other information are provided in a written operating agreement, members or managers, if any, shall give to the extent the circumstances allow just, reasonable, true, and full information of all things affecting the members to any member ~~and or~~ to the legal representative of any deceased member or of any member under legal disability **upon reasonable demand for any purpose reasonably related to a member's interest as a member of the limited liability company.**

(d) If a limited liability company is managed by one (1) or more managers, a member or the legal representative of a deceased member or a member under a legal disability may obtain information under subsection (c) only if:

(1) the member makes the request at least five (5) business days before the date on which member wishes to obtain the information;

(2) the member makes the request in good faith and for a proper purpose;

(3) the member describes with reasonable particularity the member's purpose and the information that the member wishes to obtain; and

(4) the information is directly connected to the member's purpose.

~~(d)~~ (e) Failure of the limited liability company to keep or maintain the records or information required by this section is not grounds for imposing liability on any member for the debts and obligations of the limited liability company.

SECTION 29. IC 23-18-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Upon the occurrence of an event of dissociation under IC 23-18-6-5 that does not cause dissolution, a dissociating member is entitled to receive:

(1) any distribution that the member is entitled to under this article or the operating agreement; and

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(2) unless otherwise provided in the operating agreement, within a reasonable time after dissociation, the fair value of the member's interest in the limited liability company as of the date of dissociation based on the member's right to share in distributions from the limited liability company, **less a distribution received under subdivision (1).**

SECTION 30. IC 23-18-5-5.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Upon the occurrence of an event of dissociation under IC 23-18-6-5, a dissociating member is entitled to receive:

(1) any distribution that the member is entitled to under this article or the operating agreement; and

(2) unless otherwise provided in the operating agreement, within a reasonable time after dissociation, the fair value of the member's interest in the limited liability company as of the date of dissociation based on the member's right to share in distributions from the limited liability company, **less a distribution received under subdivision (1).**

SECTION 31. IC 23-18-9-1.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) A limited liability company is dissolved and the limited liability company's affairs must be wound up when the first of the following occurs:

(1) At the time or on the occurrence of events specified in writing in the articles of organization or operating agreement.

(2) If there is one (1) class or group of members, written consent of two-thirds (2/3) in interest of the members or, if there is more than one (1) class or group of members, written consent of two-thirds (2/3) in interest of each class or group of members.

(3) Entry of a decree of judicial dissolution under section 2 of this chapter.

(c) A limited liability company is dissolved and the limited liability company's affairs must be wound up if there are no members. However, this subsection does not apply if, under a provision in the operating agreement, not more than ninety (90) days after the occurrence of the event that caused the last remaining member to cease to be a member, **either:**

(1) the personal representative of the last remaining member

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1 agrees in writing:

2 ~~(1)~~ (A) to continue the business of the limited liability
3 company; and

4 ~~(2)~~ (B) to the admission of the personal representative or the
5 personal representative's nominee or designee to the limited
6 liability company as a member; or

7 (2) a member is admitted to the limited liability company in
8 the manner provided for in the operating agreement
9 specifically for the admission of a member to the limited
10 liability company after the last remaining member ceases to
11 be a member;

12 effective as of the time of the event that caused the last remaining
13 member to cease to be a member.

14 SECTION 32. IC 23-18-9-7.5 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2006]: Sec. 7.5. (a) A limited liability
17 company may revoke its dissolution within one hundred twenty
18 (120) days of its effective date.

19 (b) Revocation of dissolution must be authorized in the same
20 manner as the dissolution was authorized unless the authorization
21 for dissolution permitted revocation of the dissolution by action of
22 the managers alone. If the authorization for dissolution permitted
23 revocation of the dissolution by action of the managers alone, the
24 managers may revoke the dissolution without member action.

25 (c) After the revocation of dissolution is authorized, the limited
26 liability company may revoke the dissolution by delivering to the
27 secretary of state for filing articles of dissolution and articles of
28 revocation of dissolution. The articles of revocation of distribution
29 must set forth the following:

30 (1) The name of the limited liability company.

31 (2) The effective date of the revocation of dissolution.

32 (3) The date that the revocation of dissolution was authorized.

33 (4) If applicable, a statement that the limited liability
34 company's members or managers revoked the dissolution.

35 (5) If the limited liability company's members or managers
36 revoked a dissolution authorized by the members or
37 managers, a statement that the authorization permitted
38 revocation of the dissolution by action of the members or of
39 the managers alone.

40 (d) Unless otherwise specified, a revocation of dissolution is
41 effective when articles of revocation of dissolution are filed.

42 (e) A revocation of dissolution relates back to and takes effect as

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1 of the effective date of the dissolution. A limited liability whose
2 dissolution is revoked resumes carrying on business as if there had
3 been no dissolution.

4 SECTION 33. IC 23-18-11-5 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) A foreign limited
6 liability company authorized to transact business in Indiana must obtain
7 an amended certificate of authority from the secretary of state if it
8 ~~changes~~ **does** any of the following:

9 (1) **Changes** its name.

10 (2) **Changes** the latest date, if any, upon which it is to dissolve.

11 (3) **Changes** the state or country of its organization.

12 (4) **Converts to a different form of entity.**

13 (b) The requirements of section 4 of this chapter for obtaining an
14 original certificate of authority apply to obtaining an amended
15 certificate under this section.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1306, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

FOLEY, Chair

Committee Vote: yeas 12, nays 0.

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